



**ADVOCATES  
FOR HIGHWAY  
AND AUTO SAFETY**

**750 First Street, N.E.  
Washington, D.C. 20002**

July 26, 2007

**DOT Docket No. FMCSA-2007-28055**

U.S. Department of Transportation  
Docket Management Facility  
West Building Ground Floor, Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

**Demonstration Project on NAFTA Trucking Provisions  
Notice; Supplemental request for public comment  
72 FR 31877 et seq., June 8, 2007**

**Comments regarding Docket Items No. FMCSA-2007-28055-1640 and 1641**

Advocates for Highway and Auto Safety (Advocates) submits these comments in further response to documents placed in the electronic docket for this rulemaking proceeding. On Friday, January 22, 2007, the Federal Motor Carrier Safety Administration (FMCSA) filed 19 documents in the docket during the public comment period for the supplemental notice regarding the Demonstration Project on NAFTA Trucking Provisions, 72 FR 31877 (June 8, 2007). The documents are listed in the docket as entries FMCSA-2007-28055-1639 through FMCSA-2007-28055-1658. These documents were not provided in the public docket until late in the course of an already foreshortened 20-day period for public comment. Even the re-opening of the public comment period until July 9, 2007, did not afford Advocates sufficient time to review all the documents, which consisted of over 250 pages of text and other materials.

Advocates has reviewed the two documents filed as docket items FMCSA-2007-28055-1640 and FMCSA-2007-28055-1641, which are both entitled "CABOTAGE: Mexico-Domiciled Motor Carriers," FMCSA (June 2007). These two documents appear to be pamphlets that are intended to explain certain aspects of the cargo shipment term *cabaotage*. The text of the two documents is identical except that the information contained on page 1 of item #1640 appears on page 2 of item #1641 and the information contained on page 2 of item #1640 appears on page 1 of item #1641. While the text of the two documents are identical, each one has a different layout, page format, and text fonts and each document uses a unique set of accompanying photographs.

It is not clear precisely who is intended to read this information. There is no indication of the intended audience in the text and no accompanying memorandum or explanatory material in the docket. Because some of the information contained in the document regarding the issue of international freight movement and *cabotage* is so basic, and attempts to explain fundamental concepts of *cabotage*, it is possible that the intended audience is the general public. However, the use of certain technical terminology, as well as the premise of some of the questions, appear to assume that the reader has more experience with freight transportation than would be true of the general population. In addition, the explanatory information cites to specific provisions in federal regulations, which the general public is not likely to understand or be conversant, and the fact that the reader is advised to direct further questions to FMCSA Division Administrators. These factors appear to indicate that the two documents are intended for use in training state and local inspectors and law enforcement officials who are unfamiliar with *cabotage* and *cabotage* enforcement requirements. The FMCSA has stated that it has provided training “aimed at law enforcement agents who are not full-time truck inspectors, but may encounter a Mexican truck during a traffic stop[.]” 72 FR 31883. This is one of the areas that Congress required FMCSA to publish information about and to provide the public with a sufficient opportunity for public comment.<sup>1</sup>

Both documents were created only very recently (each is dated “June, 2007”), and neither document has yet been printed as the publication number on each is listed only as “Pub# XXXX-XXX-XXXX”. This indicates that these training documents with basic explanatory material have not yet been used or disseminated by FMCSA to its target audience. If that audience is intended to be local law enforcement officials unfamiliar *cabotage* regulation and requirements, then a basic component of that training has not been used or distributed. Since no earlier training documents regarding the issue of *cabotage* enforcement have been placed in the docket, it appears that no planning for this issue was contemplated by FMCSA prior to June, 2007. Indeed, the announcement regarding the Demonstration Project was made by the Secretary of Transportation on February 23, 2007, and was originally intended to commence in about 60 days,<sup>2</sup> by late April, 2007. Thus, it is evident that no planning had previously been given to the need to educate or train law enforcement officials regarding the violation of *cabotage* requirements by Mexico-domiciled motor carriers when operating in the United States.

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<sup>1</sup> “[S]pecific measures to be requires to ensure compliance with section 391.11(b)(2) and section 365.501(b) of title 49, Code of Federal Regulations[.]” Title VI, Chapter 9, § 6901(b)(2)(B)(iii) of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28 (May 25, 2007).

<sup>2</sup> Remarks for The Honorable Mary E. Peters, Secretary of Transportation, Mexican Trucks News Conference, El Paso, Texas (Feb. 23, 2007) available at the Department of Transportation website: <http://www.dot.gov/affairs/cbtsip/peters022307.htm>.

Since these documents are basic primers regarding *cabotage* enforcement, their appearance in the docket on June 22, 2007, undermines the FMCSA assertion that it has already conducted adequate training for law enforcement officials regarding *cabotage* requirements. *See* 72 FR 31883. FMCSA claims that it has already performed such training, yet the basic information that would be useful for such training, items #1640 and 1641, has not yet been unpublished or distributed. This raises a serious question as to the validity of FMCSA's statement on the issue of *cabotage* regulation in response to the publication requirement in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28 (May 25, 2007). In response to the publication requirement with respect to *cabotage* rules, section 6901(b)(2)(B)(iii), FMCSA stated that it "has trained all State truck inspectors in the enforcement of operating authority restrictions and conducted significant outreach to the law enforcement community to ensure they are aware of these provisions and that they will examine MX trucks to determine if they are violating these restrictions." 72 FR 31883.<sup>3</sup> It is unclear how valuable the training might be if the basic information intended to advise local law enforcement officials and inspectors was only recently rushed into development and has yet to be printed and disseminated.

These documents also show that FMCSA has still not completed the requirements imposed by Congress in section 350 of the Department of Transportation and Related Agencies Appropriations Act, 2002, Pub. L. 107-87 (Dec. 18, 2001). Section 350(a) of that law requires, among other things, that FMCSA "(6) require[ ] State inspectors who detect violations of Federal motor carrier safety laws or regulations to enforce them[.]" Arguably, State and local inspectors and law enforcement officials cannot be required to detect violations that they have not been adequately trained and educated to detect and enforce. Likewise, section 350(c)(1)(H) cannot be verified as accomplished by the DOT Inspector General since the FMCSA has failed to disseminate appropriate information and provide adequate training to State and local law enforcement officials regarding license revocation for violation of *cabotage* requirements. Indeed, as the documents themselves point out, although a driver who has committed a *cabotage* violation is to be placed out of service, the driver is to be cited only for operating beyond the scope of his operating authority, under 49 C.F.R. 392.9a(a), but not for violating the *cabotage* regulations under 49 C.F.R. 365.501(b). *See* "What should an enforcement officer do

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<sup>3</sup> The FMCSA statement goes on to say, "[a]dditionally, we have and will continue to provide training to State and local law enforcement agencies on conducting roadside vehicle/driver traffic stops and detecting *cabotage* violations during stops of commercial motor vehicles for traffic violations. This training, aimed at law enforcement agents who are not full-time truck inspectors, but may encounter a Mexican truck during a traffic stop, is being conducted in association with the International Association of Chiefs of Police." *Id.*

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when a cabotage violation is discovered?”, item #1640 at 2, item #1641 at 1.<sup>4</sup> This reflects that not only has FMCSA failed to adequately prepare State and local enforcement officials to enforce federal regulations once the Demonstration Project is underway, but that not all States have adopted and can enforce the cabotage restrictions in federal regulation.

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<sup>4</sup> The documents state “Because many states may not have adopted this section [49 C.F.R. 365.501(b)] of the regulations and for consistency purposes, for cabotage violations FMCSA encourages enforcement officers cite 49 CFR 392.9a(a)”. Item #1640 at 2; item #1641 at 1.